Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 9A of 2003 (S/S)
(Old No. 5523 of 1995)

Govind Prasad Gairola …….. Petitioner

Versus

The State & others …… Respondents

Mr. Pnkaj Miglani, learned counsel for the petitioner.
Mr. D.S. Patni, learned counsel for respondent Nos. 2 to 5.

Hon'ble P.C, Pant, J.

This writ petition has been moved under Article 226 of the Constitution of India for mandamus directing the respondents to regularize the services of the petitioner on the post of Draughtsman and also for the payment of dues of salary to the tune of Rs. 1,68,364.80.

2) Brief facts of the case are that the petitioner was appointed as Draughtsman on 06.09.1985 on daily wages in Jal Nigam and continued so till 28.02.1987. The executive Engineer of the Project Division of U.P. Jal Nigam sent a letter dated 28.01.1988 (copy Annexure – 3 to the writ petition) to the higher authorities for permitting to appoint the petitioner in officiating capacity on the post of Draughtsman. Meanwhile, petitioner demanded the salary of the pot of Draughtsman by sending letter dated 11.10.1986 to the higher authorities. However, he was transferred from the Project Division O U.P. Jal Nigam to Ganga Pollution Control Unit, Haridwar against the post of Work Agent. The General Manager of the Ganga Pollution control Unit also sought permission fro the Chief Engineer to appoint petitioner as Draughtsman vide his letter dated 28.01.1988. The Chief

Engineer authorized the General Manager to hold examination of the petitioner along with that of outsides. On this the General Manager of U.P. Jal Nigarm requested the Chief Engineer to permit him to take examination of only the petitioner as he is departmental candidate and duly qualified or his services be regularized as Draughtsman. The petitioner posses the certificate of Industrial Training Institute of a Draughtsman, but the Chief Engineer vide his order dated 13.04.1989 refused the permission to the General Manger to appoint the petitioner as Draughtsman. Consequently, the Nigam paid the petitioner salary of Work Agent while the work taken from him was that of the Draughtsman. Ultimately the petitioner vide his representation dated 15.11.1995 claimed the dues of salary (between Work Agent and Draughtsman) to the tune of Rs. 1,68,364.80 for the work taken from him and moved this writ petition for regularization of this service as Draughtsman.

3) Counter affidavit was filed by the Deputy Manager(law) on behalf of U.P. Jal Nigam and the claim of the petitioner was contested. In the counter affidavit it is stated that petitioner was appointed on muster roll on daily wages as such he cannot claim the salary of a Draughtsman in regular establishment. Denying the allegation that the petitioner was ever given work of Draughtsman it is alleged in the counter affidavit that the petitioner has cleverly projected himself as Draughtsman. Though the correspondence alleged in the writ petition is not denied but it is alleged that there was restrictions form the Government of U.P. in the appointments as such no appointment as Draughtsman could have been made in the matter. The petitioner infact continued to work as skilled worker on daily wages on muster roll. Lastly it is stated in the counter affidavit

that no amount as claimed by the petitioner is due to be paid to him.

4) I heard learned counsel for the parties and perused the record.

5) The main question before this Court is whether the petitioner was entitled to regularization/appointment to the post of Draughtsman if so from which date and is the petitioner entitled to the dues of pay claim by him.

6) At the outset, it is pertinent to mention here that during argument learned counsel for the respondent has filed a fresh affidavit dated 04.08.2004 in which it has been admitted that the petitioner has performed duties as Draughtsman but on daily wages. In para 2 of this new affidavit, the respondent has stated that during pendency of this petitioner vide office memorandum dated 22.03.2002 services of petitioner has been regularized on the post of Work Agent in the pay scale of Rs. 825-1200 w.e.f. 01.04.1991. It is further stated in this affidavit that the petitioner had joined work as regular Work Agent and is getting the salary of said post of Work Agent. The lone Annexure filed with this new affidavit dated 04.08.2004 corroborates that the petitioner has been regularized as Work Agent w.e.f. 01.04.1991 in the pay scale of 825-1200. As such now he is no more a daily wage employee w.e.f. 01.04.1991. This writ petition was filed in the year 1995.

7) Learned counsel for the petition did not dispute the above development during arguments but submitted that the petitioner is entitled to salary of Draughtsman as the work of Draughtsman has been taken from the petitioner. However, form the perusal of the affidavits, counter affidavit and rejoinder affidavit and annexure thereto it is not clear if the petitioner, who was infact initially engaged as Work Agent on daily wages and

later regularized as Work Agent has actually the work of Draughtsman. Of course, it is clear from the record that the petitioner did posses qualification of a Draughtsman. However, the entitlement of salary of regularization to the post of Draughtsman arises only if the department has taken work of Draughtsman from the petitioner which is not established from the record.

8) In view of the above circumstances, I see no merit in the petition for the relief of mandamus directing the respondents to regularize the petitioner as Draughtsman or to pay arrears of Rs. 1,68,364.80. Writ petition is accordingly dismissed. No order as to costs.

(P.C. Pant, J.)

Dt. 9th August 2004.
H.Negi